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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,099	11/05/2003	Rupert A. Schmidberg	S1446.70000US01	6804
23628	7590	07/07/2005	EXAMINER	
WOLF GREENFIELD & SACKS, PC FEDERAL RESERVE PLAZA 600 ATLANTIC AVENUE BOSTON, MA 02210-2211			LE, UYEN CHAU N	
			ART UNIT	PAPER NUMBER
			2876	

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/702,099

Applicant(s)

SCHMIDTBERG ET AL.

Examiner

Uyen-Chau N. Le

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Prelim. Amdt/Amendment

1. Receipt is acknowledged of the Amendment filed 15 April 2005.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-15, 27-35 and 40 remain rejected under 35 U.S.C. 102(e) as being anticipated by Daum et al (US 6,826,267).

Re claim 1: Daum et al discloses at least one storage device (i.e., RF tag) (col. 6, lines 60-65) storing at least one dynamic identifier associated with at least one item (i.e., food, etc.) (col. 6, lines 60-65), the at least one dynamic identifier configured to include

at least one variable portion (see fig. 2) that has at least one of a variable content and a variable length based at least in part on at least one detectable condition (i.e., temperature, etc.) associated with the at least one item (i.e., food, etc.) (col. 6, lines 60-65).

Re claim 2: wherein the at least one dynamic identifier has a fixed length and a plurality of fields (fig. 2), and wherein the at least one variable portion has a variable content based at least in part on the at least one detectable condition and at least one field of the plurality of fields (col. 3, line 44 through col. 4, line 34).

Re claims 3-5: wherein the at least one detectable condition relates to a measurable parameter (i.e., temperature, etc.) of the at least one item itself, environment, an elapsed time from at least one event associated with the at least one item, respectively (col. 6, lines 30-65).

Re claims 6-7: wherein the at least one dynamic identifier includes at least one dynamic electronic product code (EPC), which further includes a fixed portion including at least one of a first identifier related to a source (i.e., manufacture MFG) of the at least one item; a second identifier related to a product type (i.e., appliance type APPL TYPE) of the at least one item (see figs. 2-4; col. 3, line 44 through col. 4, line 34).

Re claims 8-11: the apparatus is in combination/integrated/attached/embedded respectively in the at least one item (col. 6, line 64).

Re claim 12: wherein the at least one storage device is configured to store the at least one dynamic EPC as a variable binary number (fig. 2; col. 6, line 66 through col. 7, line 4).

Re claims 13-15: wherein the variable binary number includes at least 64 bits, 96 bits, and 128 bits, respectively (figs. 2-4; col. 3, line 44 through col. 4, line 34).

Re claim 27: see claims 1 and 6-7.

Re claim 28: wherein the signal is a radio-frequency signal configured for wireless transmission (i.e., RF tag sensor) (col. 6, line 64).

Re claim 29: wherein the signal is configured for optical transmission (i.e., barcode scanner) (col. 6, line 64).

Re claim 30: wherein the signal is configured for transmission over a network 100 (fig. 1; col. 3, lines 12+).

Re claim 31: see claim 7.

Re claims 32-35: see claims 12-15.

Re claim 40: the at least one detectable condition includes at least one temperature associated with the at least one item; the at least one variable portion of the at least one dynamic EPC includes at least one representation of the at least one temperature (col. 6, lines 30-65); the at least one dynamic EPC further includes a fixed portion including at least one of: a first identifier related to a source (i.e., manufacture MFG) of the at least one item; a second identifier related to a product type (i.e., appliance type APPL TYPE) of the at least one item (see figs. 2-4; col. 3, line 44 through col. 4, line 34); the at least one dynamic EPC is encoded as a variable binary number including at least 64 bits (figs. 2-4; col. 3, line 44 through col. 4, line 34); and the signal is a radio-frequency (RF) signal configured for wireless transmission (i.e., RF tag sensor) (col. 6, line 64).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 16-26, 36-39 and 41 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Daum et al in view of Shaw (US 6,563,417). The teachings of Daum et al have been discussed above.

Re claims 16-17 and 41: Daum et al have been discussed above but fail to teach or fairly suggest that the storage device is configured to be updated periodically.

Shaw teaches an RF tag 12 comprising a processor (i.e., microcontroller 8) coupled to storage device (i.e., memory 4) and the temperature sensor 2, wherein the sensed information may be maintained and regularly updated (col. 5, lines 40-58).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the teachings of Shaw into the system as taught by Daum et al in order to provide Daum et al with a versatile system in which the condition of the item and/or the environment in which the item is surrounded can be monitored/updated instantaneously upon any changes, thus any unexpected changes that would affect the item's condition can be detected, stopped and/or corrected readily; therefore, reduce the rate of bad quality and/or waste of the item.

Re claim 18: wherein the at least one detectable condition includes at least one temperature associated with the at least one item (i.e., via temperature sensor 2) (Shaw: fig. 1; col. 5, lines 40-58).

Re claim 19: wherein the at least one detectable condition includes at least one refrigeration condition associated with the at least one item (Daum et al: fig. 6; col. 6, lines 30-45).

Re claims 20 and 21: wherein the at least one detectable condition relates to a shelf life/impact sustained of the at least one item (Shaw: fig. 2; col. 5, lines 22-29).

Re claim 22: see claims 7 and 16.

Re claims 23-26: see claims 8-11.

Re claims 36-39: see claims 18-21.

Response to Arguments

7. Applicant's arguments filed 15 April 2005 have been fully considered but they are not persuasive.

8. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the variable portion could be any one or more of the manufacturer, product type, and/or product serial number fields (p. 12, 2nd paragraph)) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, manufacturer data, product type data, etc. also has been disclosed by Daum in fig. 2; col. 4, lines 5-17.

9. In response to the Applicant's argument to "... the DATA field ... of Daum is used... to provide encrypted commands or diagnostic commands... It is not variable based on any detectable condition associated with an item... Daum does not disclose or suggest a dynamic identifier configured to include at least one variable portion that has at least one of a variable content and a variable length based at least in part on at least one detectable condition associated with at least one item, as recited in claim 1, and therefore cannot anticipate this claim." (p. 13, last paragraph through p. 14, 2nd paragraph), the examiner respectfully requests the Applicant to review Daum wherein the DATA field is a variable data which can be encryption, display data, data/software updates, diagnostic commands, remote control access, etc. (see fig. 2; col. 4, lines 18-22). The examiner further submits that variable data with respect to diagnostic commands is a variable data based on any detectable condition associated with an item/appliance (i.e., the diagnostic commands can only be created based on the detected condition associated with the item; in other words, there will not be any

diagnostic commands if there is no condition associated with the appliance being detected) (col. 30, lines 59-62). Accordingly, the claimed limitation, given the broadest reasonable interpretation, a variable DATA field of Daum meets the claimed limitation of the invention (see the rejection above).

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uyen-Chau N. Le whose telephone number is 571-272-2397. The examiner can normally be reached on Mon-Fri. 5:30AM-2:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on 571-272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2876

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Uyen-Chau N. Le
June 27, 2005